

**Internal Revenue Service**

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Person To Contact:  
, ID No.

Telephone Number:

Refer Reply To:  
CC:CORP:1  
PLR-112334-22

Date:  
August 11, 2022

**Legend**

Controlled =  
Common Stock

Old Q4 Debt =

Excess Debt =

Date 1 =

Date 2 =

a =

b =

c =

Dear \_\_\_\_\_ :

This letter responds to your June 23, 2022 request that we supplement the private letter ruling dated November 19, 2021 (PLR-111605-21) (the “Prior Letter Ruling”) on certain federal income tax consequences of a series of transactions (the “Proposed Transaction”). The material information submitted in that request and subsequent correspondence is summarized below. Capitalized terms not defined in this letter have the meanings assigned to them in the Prior Letter Ruling.

This letter is issued pursuant to section 3.05 of Rev. Proc. 2017-52, 2017-41 I.R.B. 283, as amplified and modified by Rev. Proc. 2018-53, 2018-43 I.R.B. 667, regarding a supplemental ruling on one or more “Covered Transactions” under section 355 and section 368 of the Internal Revenue Code (the “Code”).

The rulings contained in this letter are based on facts and representations submitted by the taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. This office has not verified any of the materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required on examination.

### **Supplemental Facts**

The facts described in the Prior Letter Ruling are unchanged, except as described below (such changes, the “Supplemental Facts”).

Distributing retained the Retained Shares (the “Retention”) and, as described below, Distributing generally will use the Retained Shares to satisfy the New Q4 Debt (as defined below) and the Excess Debt. Distributing has determined that the Retention furthers what is represented to be a valid corporate business purpose of creating two independent capital structures, in which Distributing continues to target leverage consistent with its investment grade credit rating.

Distributing expects to dispose of the Retained Shares by undertaking the following transactions (the “Modified Stock-for-Debt Exchange”):

1. Distributing will issue new debt (the “New Q4 Debt”) to one or more financial institutions (the “Financial Institution”) for an amount approximately equal to and not materially more than the anticipated fair market value of the Retained Shares.

2. At least 1 day after the issuance of the New Q4 Debt, Distributing and the Financial Institution will enter into a forward exchange agreement and pledge agreement (collectively, the “Forward Exchange Agreement”), pursuant to which:
  - a. The Financial Institution will agree to acquire the Retained Shares from Distributing at the end of an approximately a month period (such period, the “Measurement Period” and such acquisition date, the “Closing Date”), in exchange for the Exchange Value (as defined below), provided that the Measurement Period shall end no later than Date 1 (within 365 days following the date of the External Distribution). In certain circumstances, the Financial Institution may terminate the Measurement Period and accelerate the Closing Date with respect to all Retained Shares to a date no earlier than b months after the effective date of the Forward Exchange Agreement.
  - b. Distributing will pledge all of the Retained Shares as collateral for the Forward Exchange Agreement, which shares the Financial Institution will hold in a pledge account.
  - c. The Financial Institution may receive the right to Rehypothecate (as defined below) the Retained Shares, provided that, if the Financial Institution exercises such right with respect to any of the Retained Shares, it generally would be required to replace such Retained Shares with other shares of Controlled Common Stock on or before the Closing Date, except as described in step 5a, below.
  - d. The Financial Institution will pay the Exchange Value to Distributing via full or partial offset of Distributing's obligation to pay the outstanding principal amount on the New Q4 Debt (as further described below).
3. The Financial Institution may assign to its affiliate all of its rights and obligations (and such affiliate would assume all of the Financial Institution's rights and obligations) with respect to the New Q4 Debt and the Forward Exchange Agreement. In such case, the affiliate would become the sole lender under the New Q4 Debt and the sole counterparty to Distributing under the Forward Exchange Agreement (such Financial Institution or, if there is such an assignment, such assignee, the “Creditor-Counterparty”).
4. On or before Date 2, Distributing will use the cash proceeds from the New Q4 Debt to repay a portion of the Old Q4 Debt. Distributing may refinance the

remaining portion of the Old Q4 Debt or repay such portion with cash on hand.

5. On the Closing Date:

- a. Distributing will transfer to the Creditor-Counterparty the Retained Shares, including by relinquishing its right to require the Creditor-Counterparty to replace any Retained Shares that have been Rehypothecated with other shares of Controlled Common Stock.
- b. The Creditor-Counterparty will pay the Exchange Value to Distributing by setting off an amount of Distributing's obligation to pay the outstanding principal amount on the New Q4 Debt equal to the Exchange Value.
- c. If the Exchange Value exceeds the outstanding principal amount of the New Q4 Debt, the Creditor-Counterparty may either:
  - (1) Purchase on the open market all or a portion of the Excess Debt for a total purchase price equal to such excess and transfer such Excess Debt to Distributing in extinguishment thereof; or
  - (2) Pay to Distributing in cash an amount equal to such excess (the "Excess Cash Settlement").

If the outstanding principal amount of the New Q4 Debt exceeds the Exchange Value, Distributing will pay to the Creditor-Counterparty an amount in cash equal to such excess in accordance with the terms of the New Q4 Debt, including by drawing on one or more revolving credit facilities if necessary (a "Shortfall Settlement").

Any Retained Shares that are not disposed of pursuant to the Modified Stock-for-Debt Exchange will be disposed of in the manner provided for in the Prior Letter Ruling.

As used herein, the following terms have the following meanings:

- "Exchange Value" means an amount equal to the product of (i) the VWAP plus the Premium (each as defined below) and (ii) the number of Retained Shares, subject to certain adjustments.

- “VWAP” means the arithmetic mean of the volume weighted average price of each share of Controlled Common Stock for each day of the Measurement Period, subject to certain adjustments.
- “Premium” means a fixed dollar amount per share of Controlled Common Stock, subject to certain adjustments. The amount of the Premium is expected to be in the range of c basis points.
- “Rehypothesize” means, with respect to the Retained Shares pledged as collateral for the Forward Exchange Agreement, the right of the Financial Institution to sell, lend, pledge, assign, invest, use, commingle or otherwise dispose of, or otherwise use in its business, such Retained Shares.

### **Representations**

Distributing has made the following representations with respect to the Proposed Transaction:

1. Except as set forth below, the representations made in the Prior Letter Ruling remain true and correct in all material respects.
2. Distributing makes the following representation in replacement of representation 19 in the Prior Letter Ruling:

There are one or more substantial business reasons for any delay in satisfying Distributing Debt with § 361 Consideration beyond 30 days after the date of the first distribution of Controlled stock to Distributing's shareholders. All the Distributing Debt that will be satisfied with § 361 Consideration will be satisfied no later than 180 days after such distribution, other than the New Q4 Debt and any Excess Debt, which will each be satisfied no later than 365 days after such distribution. The term “Distributing Debt” and “§ 361 Consideration” each has the meaning given thereto in Rev. Proc. 2018-53.

3. Distributing makes the following representation pursuant to section 3.04 of Rev. Proc. 2018-53:

Except as otherwise described herein, the holder of the Distributing Debt that will be assumed or satisfied will not hold the debt for the benefit of Distributing, Controlled, or any Related Person, and Creditor-Counterparty will not acquire the Distributing Debt from Distributing, Controlled, or any Related Person. Except as otherwise described herein, neither Distributing, nor

Controlled, nor any Related Person will participate in any profit gained by Creditor-Counterparty upon an exchange of the § 361 Consideration; nor will any such profit be limited by agreement or other arrangement. The value of the § 361 Consideration received by Creditor-Counterparty in satisfaction of the Distributing Debt will not exceed the amount to which the holder is entitled under the terms of the Distributing Debt. The term “Distributing Debt,” “Related Person,” and “§ 361 Consideration” each has the meaning given thereto in Rev. Proc. 2018-53.

Distributing makes the following additional representations:

4. Distributing will recognize an amount of gain on any Excess Cash Settlement equal to the lesser of (a) the amount of cash received or (b) the amount of gain that would have been realized if the Retained Shares had been sold.
5. In the event of a Shortfall Settlement, Distributing will treat any cash payment by Distributing to the Creditor-Counterparty as a repayment of the New Q4 Debt.

### **Rulings**

Based solely on the information submitted and the representations set forth above, we rule as follows:

1. The Supplemental Facts will not adversely affect any of the rulings in the Prior Letter Ruling, and, except with respect to the application of section 361(c) with respect to Distributing’s distribution of the Retained Shares, those rulings remain in full force and effect.
2. No gain or loss will be recognized to Distributing under section 361(c) upon Distributing’s distribution of the Retained Shares in the Modified Stock-for-Debt Exchange in satisfaction of the New Q4 Debt and the Excess Debt.
3. Distributing will recognize an amount of gain on any Excess Cash Settlement equal to the lesser of (a) the amount of cash received or (b) the amount of gain that would have been realized if the Retained Shares had been sold.

### **Caveats**

No opinion is expressed or implied regarding the amount of gain that would have been realized if the Retained Shares had been sold for purposes of Ruling 3.

Except as expressly provided in this letter, no opinion is expressed or implied concerning the tax treatment of the Proposed Transaction under any other provisions of the Code or regulations or the tax treatment of any conditions existing at the time of, or effects resulting from, the Proposed Transaction that is not specifically covered by the above rulings.

### **Procedural Statements**

This letter ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

A copy of this letter, together with the Prior Letter Ruling, must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their returns that provides the date and control number (PLR-112334-22) of this letter ruling and the Prior Letter Ruling.

Sincerely,

**Richard K. Passales**

Richard K. Passales  
Senior Counsel, Branch 4  
Office of Associate Chief Counsel (Corporate)

cc: